

MV 95-11

Tax Type: MOTOR VEHICLE USE TAX

Issue: Private Vehicle Use Tax - Business Reorg/Family Sale  
Rolling Stock - (Purchase/Sale Claimed To Be Exempt)

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS

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DEPARTMENT OF REVENUE )  
STATE OF ILLINOIS )  
 )  
v. )  
 )  
XXXXXX ) Mimi Brin  
 ) Administrative Law Judge  
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RECOMMENDATION FOR DISPOSITION

APPEARANCES: XXXXX, for TAXPAYER; Richard A. Rohner, Special Assistant Attorney General, for the Illinois Department of Revenue

SYNOPSIS: This matter comes on for hearing pursuant to TAXPAYER's (hereinafter referred to as the "Taxpayer" or "TAXPAYER")1 timely protest of Notice of Tax Liability XXXXX (hereinafter referred to as the "NTL") issued by the Illinois Department of Revenue (hereinafter referred to as the "Department") for Use Tax on the purchase of ten "Mack" trucks and one Pontiac automobile. At hearing, the taxpayer, through its counsel, conceded the taxability of the automobile. At issue is the question of whether the trucks are exempt from taxation under the Illinois Use Tax Act as the rolling stock of an interstate carrier for hire. 35 ILCS 105/3-55 (b)

Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The Department's prima facie case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Correction of Returns, showing a total liability due and owing in the amount of \$28,097.00 without calculation of statutory interest. Dept. Ex.

No. 1; Tr. pp. 6-7

2. Taxpayer's business is located in Illinois. Dept. Ex. No. 1

3. Taxpayer concedes the taxability of the Pontiac automobile, with a purchase price of \$8,690.00. Taxpayer Grp. Ex. No. 1; Tr. pp. 10, 11, 13

4. Taxpayer purchased at retail, on September, 1990, ten 1989 Mack trucks for which Illinois Use Tax was not paid. Dept. Ex. No. 1; Taxpayer Group Ex. No. 1

5. Taxpayer did not possess an Exempt Interstate Carrier Registration at any pertinent time.

CONCLUSIONS OF LAW: The Illinois Use Tax Act, 35 ILCS 105/1 et seq. (hereinafter referred to as the "Act"), provides, inter alia, for a tax on the "privilege of using in this State tangible personal property purchased at retail" (35 ILCS 105/3), with specific exemptions to this general mandate. Those exemptions include that for the rolling stock of an interstate carrier for hire. Specifically, the Act provides:

3-55. Multistate exemption. To prevent actual or likely multistate taxation, the tax imposed by this Act does not apply to the use of tangible personal property in this State under the following circumstances:

xxx

(b) The use, in this State, of tangible personal property by an interstate carrier for hire as rolling stock moving in interstate commerce or by lessors under a lease of one year or longer executed or in effect at the time of purchase of tangible personal property by interstate carriers for-hire for use as rolling stock moving in interstate commerce as long as so used by the interstate carriers for-hire.

35 ILCS 105/3-55 (b) The term "rolling stock" is further defined by statute as:

3-60. Rolling stock exemption. The rolling stock exemption applies to rolling stock used by an interstate carrier for hire, even just between points in Illinois, if the rolling stock transports, for hire, persons whose journeys or property whose shipments originate or terminate outside Illinois.

35 ILCS 105/3-60

By regulation, the Department mandates that if the carrier, itself, is

the purchaser of the rolling stock, it must provide the seller with its Interstate Commerce Commission Certificate of Authority number or its Illinois Commerce Commission Certificate of Authority or must certify why it is not required to have the necessary certificates. 86 Ill. Admin. Code ch. I, Sec. 340 (e) Should the purchaser of the rolling stock be a lessor, it must provide the seller with its lessee's certification (id.), however, the Department is not precluded from going behind the certifications to determine whether the purchase was taxable and should not have been certified as tax exempt. Id.

The Department's regulation also prohibits this exemption for rolling stock used by the purchaser to transport its own property which it is selling and delivering to its customers, even if the delivery is across state lines. 86 Ill. Admin. Code ch. I, Sec. 130.340 (b) This is consistent with the statutory mandate that the exemption apply to an interstate "carrier for hire". 35 ILCS 105/3-55 (b)

In the instant matter, the record reflects that TAXPAYER did not have any interstate carrier certification. Rather, this taxpayer relies on the certification held by another company, with which it claims it had a lease agreement for the vehicles at issue. The taxpayer avers that either the vehicles were used by its lessee or it used the vehicles itself, using the lessee's interstate certification (Taxpayer Grp. Ex. No. 1, Vehicle Lease Agreement and Master Trip Lease Agreement), billing the lessee's customers directly and deducting the lease charges from the amounts paid to taxpayer by these customers and remitting the remaining amounts to its lessee. Taxpayer Grp. Ex. No. 1, Affidavit XXXXX2

However, there is nothing in the provided lease to support the averment found in XXXXX's affidavit that the customers invoiced by TAXPAYER were actually its lessee's customers. On the contrary, the invoices are from taxpayer directly to a customer and there are no indications on them that taxpayer is billing or delivering on behalf of a lessee, or that

taxpayer's deliveries are not of its own goods to its own customers. 86  
Ill. Admin. Code ch. I, Sec. 130.340 (b)3 Taxpayer has also not provided  
any documentation showing that it paid sums to its purported lessee making  
the deductions referred to in the affidavit.

Nor is there any evidence herein that the purported lessee, who held  
the requisite certifications,<sup>4</sup> used the vehicles at issue. The agreement  
submitted by the taxpayer does not identify with any specificity the  
vehicles the lessee leases. Actually, there is no mandate in this  
agreement that the lessee actually lease any vehicles. Rather, the lease  
provides that either the lessee or the taxpayer "may use the vehicles in  
interstate commerce", but, the lessee's authority to travel interstate will  
be used by whichever entity uses the vehicles. There is nothing in the  
lease agreement which even alludes to taxpayer's averment that when it used  
the vehicles in interstate commerce, it used them for and on behalf of the  
lessee. Thus, the insufficiencies and evidentiary flaws of the lease and  
the invoices are considerable.

Further, and of great importance, is the fact that neither the  
provided invoices nor the lease correlate to the vehicles assessed. There  
is nothing in the Department's exhibit or the taxpayer's group exhibit  
which sets forth with specificity the vehicles at issue beyond the date of  
purchase, model year and make. Taxpayer Grp. Ex. No. 1 Although there is  
a document in taxpayer's group exhibit which lists "Unit #" and "VIN",  
there is nothing of record to connect these numbers to the vehicles  
assessed or even to the vehicles which may or may not have been leased.  
Nor are there any documents which connect the truck numbers found on the  
invoices with the assessed vehicles.

Pursuant to sections 4 and 5 of the Retailers' Occupation Tax Act (35  
ILCS 120/4, 120/5) the Department's correction of a taxpayer's return or  
its determination of tax due is prima facie correct and is prima facie  
evidence of the correctness of the amount to tax due. Id. These  
provisions are applicable to the Use Tax Act through incorporation. 35

The Department establishes the prima facie correctness of its assessment at hearing by the submission into evidence of the corrected return or the determination of tax due. *Jefferson Ice Co. v. Johnson*, 139 Ill. App.3d 626 (1st Dist. 1985) It is not necessary for the Department to substantiate the basis for its corrected return. *A.R. Barnes & Co. v. Department of Revenue*, 173 Ill. App.3d 826 (1st Dist. 1988) Once the Department establishes its prima facie case, the burden shifts to the taxpayer to overcome it. *Clark Oil & Refining Corp. v. Johnson*, 154 Ill. App.3d 773 (1st Dist. 1987) In order to overcome the presumption of the validity of the tax assessed, the taxpayer must produce competent evidence, identified with its books and records, showing that the Department's determination is incorrect. *Copilevitz v. Department of Revenue*, 41 Ill.2d 154 (1968); *Masini v. Department of Revenue*, 60 Ill. App.3d 11 (1st Dist. 1978)

In addition, it is well-settled in Illinois that tax exemption provisions are strictly construed against the taxpayer and in favor of the taxing body (*Telco Leasing, Inc. v. Allphin*, 63 Ill.2d 305 (1976)) with the exemption claimant having to clearly prove entitlement to the exemption (*United Air Lines, Inc. v. Johnson*, 84 Ill.2d 446 (1981)), with all doubts being resolved in favor of taxation. *Follett's Illinois Book & Supply Store, Inc. v. Isaacs*, 27 Ill.2d 600 (1963)

The Department established the prima facie correctness of its assessment with the introduction into evidence of its exhibit number 1. Taxpayer fails to overcome the correctness of the assessment and fails to clearly prove its entitlement to the exemption from taxation because, inter alia, it provides incomplete and insufficient documentation and fails to correlate its evidence with the assessment.

Because the taxpayer herein fails to overcome the prima facie correctness of the Department's assessment as a result of evidentiary

flaws, I must recommend that the instant assessment be finalized as issued. It is also unnecessary for me to address the issue of the "unconstitutional application of the statute" raised as an oral motion to dismiss (Tr. p. 16) by taxpayer in its closing arguments. Tr. p. 145

WHEREFORE, for the reasons stated above, it is my recommendation that Notice of Tax Liability XXXXX be finalized as issued.

Mimi Brin  
Administrative Law Judge

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1. Taxpayer Grp. Ex. No. 1 includes an affidavit, lease agreement and correspondence from taxpayer's counsel, all spelling taxpayer's name as "TAXPAYER". The same exhibit includes taxpayer invoices which spell taxpayer's name as "TAXPAYER". Assuming they are the same entity, for purposes of this recommendation, I use the "TAXPAYER" spelling.
  2. The affidavit identifies XXXXX as the Assistant Secretary for TAXPAYER.
  3. The "TAXPAYER" invoices provided by the taxpayer in its Grp. Ex. 1 state that its business is that of "Sand, Stone, Crushed Gravel and Fill of all Kinds". Thus, it appears that taxpayer is in the business of supplying, not merely transporting, the material noted. Therefore, in making the deliveries invoiced, the taxpayer is delivering its own goods to its own customers.
  4. Interstate carriers for hire are prohibited from operating over Illinois public roads without registration issued by the Illinois Commerce Commission. 625 ILCS 5/18c-4401 et seq. The Department's regulation requiring evidence of this registration or evidence of why it is not required in a specific case, is consistent with the premise that exemptions are strictly construed in favor of taxation, with the taxpayer having the burden to prove its right to the exemption. It is also consistent with a general public policy that one shall not benefit from one law relying on its particular status, while failing to comply or to acknowledge that it is required to comply with the mandates of other laws regulating those which fall into that same status.
  5. I denied taxpayer's motion as untimely. Tr. p. 16 However, even if the motion were timely, and even if the taxpayer did not have threshold flaws in its evidentiary presentation, I note that taxpayer's motion, itself, is vague and lacks specificity as to why the statute and the regulations are "vague" and "lacking in guidelines". Illinois courts have addressed the exemptions at issue herein and the decisions have interpreted the pertinent statutory and regulatory terms and provisions.